

September 30, 2008

**OFFICE OF THE HEARING EXAMINER
CITY OF RENTON**

REPORT AND DECISION

APPELLANTS:

Ralph Crear

Representing: Christopher & Noraida Dawson
559 Windsor Place
Renton, WA 980

Mark Barber
Warren, Barber & Fontes
City Attorney
Renton, WA 98057

Representing: City of Renton
Paul Baker
Code Compliance Inspector
Renton, WA 98057

Administrative Appeal of Notice and Order for Vacation of
premises located at 559 Windsor Place, Renton, WA.
File No.: LUA 08-084, AAD and SRO5-0628 and OTC CO5-
0692

PUBLIC HEARING:

After reviewing the Appellants' written requests for a hearing
and examining available information on file, the Examiner
conducted a public hearing on the subject as follows:

MINUTES

The minutes of the September 23, 2008 hearing will be distributed at a later date.
The legal record is recorded on CD.

The hearing opened on Tuesday, September 23, 2008, at 1:32 p.m. in the Council Chambers on the seventh floor
of the Renton City Hall. Parties wishing to testify were affirmed by the Examiner.

Parties present: Mark Barber, Sr. Assistant City Attorney

Paul Baker, Code Compliance Officer
City of Renton

Ralph Crear, Attorney for Mr. Dawson

Christopher Dawson, Appellant

The following exhibits were entered into the record:

<u>Exhibit No. 1:</u> Yellow file containing the original application, various reports, and letter of appeal.	<u>Exhibit No. 2:</u> Stop Work Order
<u>Exhibit No. 3:</u> Original Notice and Order	<u>Exhibit No. 4:</u> Inspection Report of Eugene Schneider
<u>Exhibit No. 5:</u> ICC Certifications for Mr. Schneider	

The **Examiner** called for further testimony regarding this project. There was no one else wishing to speak, and no further comments from staff. The hearing closed at 4:00 p.m.

FINDINGS, CONCLUSIONS & RECOMMENDATION

Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. The appellants, Christopher D. and Noraida M. Dawson, filed an appeal of a Notice and Order determining that their residence is a "Dangerous Building."
2. The appeal was filed in a timely manner.
3. The appellants own and reside at property located at 559 Windsor Place NE. The property is a single family home.
4. The home is located in the City of Renton.
5. The appellants have owned their home since sometime in 2001. The home was initially constructed in 1943.
6. The appellants have had a variety of permits issued to enable them to remodel and renovate the home since 2002. All of those permits have since expired and no existing permits allow any further work on the home.
7. After what both parties term informal inspections as well as documented inspections a number of deficiencies were identified. The appellants apparently did some work on structural elements as well as plumbing and electrical systems in the home.
8. An inspection of the residence at 559 Windsor Place NE was done on July 11, 2007. The inspection was carried out by City of Renton building, electrical and code compliance inspectors. The results of that inspection were provided to both the appellant and his legal representative.
9. It appears from the record that the appellant never followed up on that inspection. The appellants apparently did not apply for or request permits to rectify any of the noted deficiencies. Those deficiencies are found below and were part of the Notice and Order that is being appealed in this proceeding.
10. The "Notice And Order" was issued on June 17, 2008. The order states:

"The City of Renton has determined the building located on King County

Assessor's tax parcel number 9476200275 and addressed as 559 Windsor Place NE is a 'dangerous building'.

Pursuant to RMC 4-5-060, RMC 1-3 and any other applicable codes or ordinances you are hereby ordered to vacate the structure at 559 Windsor Place NE, Renton, WA, within SEVENTY-TWO HOURS (underlining in original) of the posting of this notice."

The Notice went on:

"ACTION REQUIRED

The dangerous building must be vacated within SEVENTY-TWO HOURS (underlining in original) of the posting of this notice.

WHAT YOU MUST DO

You or your licensed contractor must obtain permits to repair the violations that render 559 Windsor Place NE, Renton, WA, dangerous"

11. This appeal stayed the notice to vacate and the appellants still reside at the residence in question.
12. The appellants make two general arguments. First, the appellants are willing to rectify some of the deficiencies noted in the Order. Second, the appellants argue that some of the deficiencies noted in the report predated their permit applications, arguing, in fact, that some of those items are what are called "grandfathered" conditions that are not subject to current permitting or regulation standards.
13. The appellants' witnesses were a general contractor and an architect and neither was a licensed expert in electrical or plumbing systems. Neither could definitively address the electrical safety issues raised in the "Notice and Order." The general contractor described some of the work done on the residence as "crazy work" which does not provide much confidence in the safety or general efficacy of the renovations or what appeared to be renovations. Neither could address the potentially hidden defects behind closed walls or underneath foundation pours. Both witnesses did indicate that the way the order was written made it hard for them to determine precisely what portions of the home or systems might be deficient.
14. The City's electrical inspector reiterated the electrical problems he found that were noted in Exhibit A (see below). He noted that when reviewing electrical systems and wiring, the assumption is that all wiring is live or will be live, that is, that such wires or systems carry an electric current. That means that wires twisted together without proper caps or electrical boxes or wiring inside walls but not protected by "nail plating" at stud locations would be considered live and a potential cause of fire or electrical shock.
15. It appears that interior walls were moved, a carport was walled in but did not comply with fire separation standards for enclosed garages, a carport "roof" was converted to a "deck" without proper permits and indications that it met structural load requirements. A "laundry room" was apparently created that did not meet code standards. Plumbing work and/or foundation work was closed prior to proper inspections making it impossible to determine if standards were complied with during installation.
16. Even if one could discern older work that might be considered "grandfathered" it was noted that exposed or visible work that did not meet standards was subject to inspection and compliance with code.

17. Attached to the "Notice and Order" were two exhibits. Exhibits A and B are quoted below. Exhibit A contains the "dangerous building violations" while Exhibit B contains the "building, electrical, plumbing and mechanical code violations that must be corrected before approval of occupancy can be granted."

EXHIBIT A

1. NATIONAL ELECTRICAL CODE (NEC.) 110.14
EQUIPMENT GROUNDING CONDUCTORS SHALL BE PROPERLY CONNECTED WITH LISTED CONNECTIONS. (JUST TWISTING TOGETHER NOT APPROVED). POSSIBLE FIRE HAZARD
2. NEC.300.4 (A)
NAIL PLATING REQUIRED WHEN DRILLED HOLES ARE LESS THAN 1¼" FROM INSIDE OF HOLE TO OUTSIDE OF STUD. POSSIBLE FIRE HAZARD
3. NEC408.40
SUB-PANEL IN BASEMENT SHALL HAVE NEUTRAL AND GROUNDS ISOLATED. POSSIBLE ELECTRICAL SHOCK
4. NEC.334.15 (B)
BONDING OF HOT, COLD AND GAS PIPE REQUIRED IN BASEMENT FOR SERVICE PANEL. (200 AMP) POSSIBLE ELECTRICAL SHOCK
5. NEC.250.53 (A)
GROUND ROD SHALL BE LOCATED OUTSIDE DWELLING AND NOT IN BASEMENT FOR MOISTURE LEVEL NEEDED. INSTALL A MINIMUM OF (2) GROUND RODS A MINIMUM OF 6' APART. POSSIBLE SHOCK HAZARD
6. NEC.334.15
EXPOSED ROMEX IN GARAGE AREA BOTTOM OF FLOOR JOISTS, ALSO ROMEX TO LIGHT IN GARAGE IS STUBBED OUT OF WALL & NOT PROPERLY PROTECTED. POSSIBLE FIRE AND SHOCK HAZARD
7. NEC334.40
NON-METALLIC ROMEX SHALL ENTER METAL BOX KO'S WITH APPROVED FITTINGS TO PROTECT CABLE. (RECESSED CAN LIGHTS) POSSIBLE FIRE HAZARD
8. NEC.314.27 (D)
BEDROOM OFF DECK AND ALSO BACK BEDROOM HAS EXISTING PADDLE FANS SUPPORTED OFF BOXES NOT APPROVED FOR PADDLE FANS, WHICH CREATES A HAZARDOUS INSTALLATION. POSSIBLE FIRE HAZARD AND FALLING EQUIPMENT
9. REVISED CODE OF WASHINGTON (RCW.) 19.28.101 (4)
SHEETROCK HAS BEEN INSTALLED IN A NUMBER OF LOCATIONS SUCH AS BATH, BEDROOM OFF DECK & BASEMENT CONCEALING THE NON-METALLIC SHEATHED CABLE BEFORE INSPECTED. POSSIBLE FIRE HAZARD
10. UNIFORM BUILDING CODE (UBC) SEC 106.4.5
WALLS MOVED IN SINGLE-FAMILY DWELLING. POSSIBLE COLLAPSE
11. UBC 1806
EXTERIOR WALL SUPPORTING DECK (BASEMENT WALL) REQUIRES A FOOTING. POSSIBLE COLLAPSE
12. UBC 108.5
FOOTING PLACED WITHOUT INSPECTION. POSSIBLE SEISMIC FAILURE
13. UBC 1806.6
ANCHOR BOLTS REQUIRED. POSSIBLE SEISMIC FAILURE
14. UBC 2320.11
IMPROPER WALL FRAMING

Dawson Code Violation Appeal

File No.: LUA-08

September 30, 2008

Page 5

BEAMS SUPPORTED BY POST TO FOOTING. POSSIBLE COLLAPSE

15. UBC TABLE 3-B
OCCUPANCY SEPARATION WALL. PREVENTS FIRE SPREAD
16. UNIFORM PLUMBING CODE (UPC) 103.5
APPROVAL OF UNDERGROUND PLUMBING
INSTALLATION OF WASTE, VENT AND WATER PIPING NOT COMPLETE.
POSSIBLE METHANE GAS EXPLOSION

EXHIBIT B

1. NEC.334.15 (B)
EXISTING ROMEX HANGING DOWN IN BATHROOM WITH KEYED PORCELAIN FIXTURE
CONNECTED TO IT. ROMEX IS SUBJECT TO PHYSICAL DAMAGE HANGING OUTSIDE
WALL & EXPOSED.
2. NEC.230.24 EXCEPT #2
SERVICE DROP SHALL BE RAISED A MINIMUM OF 3' ABOVE ADDITION TO BACK OF
HOUSE FOR PROPER CLEARANCE. (ONLY APPROXIMATELY 12" CLEARANCE)
3. NEC.334.15
EXPOSED ROMEX IN BASEMENT ABOVE SUB-PANEL. (NOT LOCATED IN WALL)
4. NEC.210.11 (C) (2)
SHALL HAVE 20 AMP CIRCUIT FOR LAUNDRY IN BASEMENT.
5. NEC.220.54
DRYER SHALL HAVE A MINIMUM OF A 30 AMP CIRCUIT IN BASEMENT.
6. NEC.210.12
BASEMENT BEDROOM LIGHTS AND RECEPTACLES SHALL BE GFI PROTECTED.
7. NEC.314.17
NON-METALLIC CABLE SHALL ENTER APPROVED ENCLOSURES AND BE SUPPORTED.
(BASEMENT AREA)
8. NEC.314.23
2-GANG SWITCH BOX NOT CONNECTED TO STUD - HANGING FREE AND SUPPORTED
WITH A 12/2 ROMEX.
9. NEC.210.52 (A)
DINING IN BASEMENT SHALL HAVE REQUIRED NUMBER OF RECEPTACLES.
10. NEC.200.6 AND NEC.250.62
GROUNDING ELECTRODE CONDUCTOR SHALL NOT HAVE WHITE PHASE TAPE ON
TERMINATING END IN SERVICE PANEL.
11. NEC.110.22
PANEL DIRECTORY SHALL BE FILLED OUT TO INDICATE EACH DISCONNECTS
PURPOSE.
12. NEC.334.30
SUPPORT AND SECURE ROMEX WITHIN 12" OF ENCLOSURES AND THEN EVERY 4½".
(BASEMENT AREA)
13. NEC.210.8 (A) AND NEC.210.52 (5) (D)
A GFCI RECEPTACLE SHALL BE LOCATED WITHIN 3' OF BASIN LOCATION IN
BATHROOM LOCATED BY NEW BEDROOM OFF DECK.
14. UBC 509
INSTALL GUARDRAILS.

15. UBC 1003.3.3.6
INSTALL HANDRAILS.
16. OBTAIN ALL REQUIRED MECHANICAL PERMITS.

CONCLUSIONS:

1. The appellant has the burden of demonstrating that the decision of the City Official was either in error, or was otherwise contrary to law or constitutional provisions, or was arbitrary and capricious (Section 4-8-110(E)(7)(b)). The appellants have failed to demonstrate that the action of the City should be reversed. The appeal is denied.
2. Arbitrary and capricious action has been defined as willful and unreasoning action in disregard of the facts and circumstances. A decision, when exercised honestly and upon due consideration of the facts and circumstances, is not arbitrary or capricious (Northern Pacific Transport Co. v Washington Utilities and Transportation Commission, 69 Wn. 2d 472, 478 (1966)).
3. An action is likewise clearly erroneous when, although there is evidence to support it, the reviewing body, on the entire evidence, is left with the definite and firm conviction that a mistake has been committed. (Ancheta v Daly, 77 Wn. 2d 255, 259 (1969)). An appellant body should not necessarily substitute its judgment for the underlying agency with expertise in a matter unless appropriate.
4. The record clearly shows that the residence is a dangerous building and that occupancy during any needed renovation could jeopardize life and safety. As the Notice indicated "Dangerous buildings are any buildings or structures that have conditions or defects that endanger the life, health, property or safety of the public or the building's occupants." The list of problems is extensive. Many involve electrical problems that can lead to fire or electrical shock. Both fire and electrical shock may jeopardize life-safety. Some of the problems noted are structural and could lead to failure of supporting beams, ceilings or floors. Some of the problems that were found are less serious but still add to the overall conclusion that the home is not a safe living environment.
5. Occupancy of the home as a residence by the appellants is not appropriate when the outstanding problems are so extensive. The order to vacate the premises appears reasonable. It is based on a list of hazards in both electrical systems and structural elements.
6. The appellants' suggestion that substandard elements are grandfathered since they were preexisting is untenable. The problem with the appellants' "grandfathered" arguments is that there is nothing in the record that clearly delineates what items the appellants altered and what might have existed prior to their renovation work. The work appears in many instances to be haphazard. One of the appellants' witnesses testified that it was "crazy work." That strongly suggests things were amiss and not in just small measure. The appellants have the burden of demonstrating that the City's order was erroneous. They did not produce evidence supporting their claims of grandfathered deficiencies. In addition, what work might have been grandfathered, if any, was exposed by renovation and became subject to proper inspection. What is clear that some of the deficiencies noted on the "Notice and Order" are more than cosmetic and could lead to life/safety issues.
7. Even the structural issues raised by the appellants' witnesses were fairly debatable by one or both of those parties but they did not address the cumulative affects of substandard construction work. Foundation work, footings and supporting beams were either not properly done or were not subject to inspection. Roof structures were converted to decks without proper plans showing bearing loads.

Improper fire separation was created when a carport was converted to an enclosed garage.

8. The decision below should not be reversed without a clear showing that the decision is clearly erroneous or arbitrary and capricious. This office has found that the decision below was clearly supported by the facts and the decision below should not be reversed or modified.

DECISION:

The decision is affirmed and the appeal is denied.

ORDERED THIS 30th day of September 2008.

FRED J. KAUFMAN
HEARING EXAMINER

TRANSMITTED THIS 30th day of September 2008 to the following:

Mayor Denis Law	Dave Pargas, Fire
Jay Covington, Chief Administrative Officer	Larry Meckling, Building Official
Julia Medzegian, Council Liaison	Planning Commission
Gregg Zimmerman, PBPW Administrator	Transportation Division
Alex Pietsch, Economic Development	Utilities Division
Jennifer Henning, Development Services	Neil Watts, Development Services
Stacy Tucker, Development Services	Janet Conklin, Development Services
Renton Reporter	

Pursuant to Title IV, Chapter 8, Section 100G of the City's Code, **request for reconsideration must be filed in writing on or before 5:00 p.m., October 14, 2008.** Any aggrieved person feeling that the decision of the Examiner is ambiguous or based on erroneous procedure, errors of law or fact, error in judgment, or the discovery of new evidence which could not be reasonably available at the prior hearing may make a written request for a review by the Examiner within fourteen (14) days from the date of the Examiner's decision. This request shall set forth the specific ambiguities or errors discovered by such appellant, and the Examiner may, after review of the record, take further action as he deems proper.

An appeal to the City Council is governed by Title IV, Chapter 8, Section 110, which requires that such appeal be filed with the City Clerk, accompanying a filing fee of \$75.00 and meeting other specified requirements. Copies of this ordinance are available for inspection or purchase in the Finance Department, first floor of City Hall. **An appeal must be filed in writing on or before 5:00 p.m., October 14, 2008.**

If the Examiner's Recommendation or Decision contains the requirement for Restrictive Covenants, the executed Covenants will be required prior to approval by City Council or final processing of the file. You may contact this office for information on formatting covenants.

The Appearance of Fairness Doctrine provides that no ex parte (private one-on-one) communications may occur concerning pending land use decisions. This means that parties to a land use decision may not communicate in private with any decision-maker concerning the proposal. Decision-makers in the land use process include both the Hearing Examiner and members of the City Council.

All communications concerning the proposal must be made in public. This public communication permits all interested parties to know the contents of the communication and would allow them to openly rebut the evidence. Any violation of this doctrine would result in the invalidation of the request by the Court.

The Doctrine applies not only to the initial public hearing but to all Requests for Reconsideration as well as Appeals to the City Council.